

21-5106

ORIGINAL

No. 20-3145

D.C. No's 2:18-CV-02152-JAR- and
2:16-cr-20060-JAR-1

Supreme Court, U.S.
FILED

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IN THE
SUPREME COURT OF THE UNITED STATES

Logan Mitchell Viqwuesney - Petitioner

v.

United States of America - Respondent

On Petition for a Writ of Certiorari from
United States Court of Appeals Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

Logan Mitchell Viquesney
#28080-031
United States Penitentiary Marion
PO Box 1000
Marion IL 62959

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SUPREME COURT, U.S.

Questions Presented

- 1) Can the Court sustain a conviction when a required underlined State offense is not charged in the indictment?

List of Parties

All parties to the proceedings are listed in the caption. The petitioner is not a corporation.

Related Cases

This case arises from the following proceedings in the United States District Court for the District of Kansas and the United States Court of Appeals for the Tenth Circuit: United States v. Viquesney, no: 2:16-cr-20060-JAR-1 (D. Kansas September 12, 2017) and United States v. Viquesney no. 2:18-cv-02152-JAR, 10th Cir. 2020).

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Statement of the Case

The District and Appellant courts constructively amended my indictment by using Illinois State law as the underlying state charge in my case. A constructive amendment occurs when the Court allows proof of an essential element of the crime on an alternate basis provided by the statute but not changed in the indictment. See U.S. v. Scher, 601 F.3d 408 (5th Cir. 2010); U.S. v. Hien Van Tieu, 279 F.3d 917 (10th Cir. 2002). A constructive amendment violates two separate constitutional rights: (1) Depriving the defendant of his Fifth Amendment right to be indicted by a grand jury on the charges against him; and (2) His Sixth Amendment right to receive notice of the charges. See U.S. v. Miller, 891 F.3d 1220 (10th Cir. 2018). Also, counsel is considered to have rendered ineffective assistance when failing to object to an obvious constructive amendment. See U.S. v. Phea, 953 F.3d 828 (5th Cir. 2020).

My indictment does not allege that I violated Illinois law nor does it accuse me of being in or travelling through the State of Illinois. Despite this, the District and Appellant Courts have stated that I am guilty of violating Federal statute solely because I violated Illinois law. This error cannot be dismissed as merely an insignificant variance between allegation and proof and thus thus harmless error. See Stirone v. U.S., 361 U.S. 212 (1960). After an indictment is returned it's charges may not be broadened through amendment except by the Grand Jury itself. See United States v. Miller, 471 U.S. 130 (1985); United States v. Norris, 281 U.S. 619 (1930); Ex Parte Bain, 121 U.S. 1 (1887). Since no mention of Illinois is made in the indictment,

it cannot be construed that the Grand Jury evaluated this when issuing the indictment. See U.S. v. Hathaway, 318 F.3d 1001 (10th Cir. 2003). Also since a plea of guilty constitutes an admission of all material facts well pleaded in the indictment, I did not plead guilty to violating an Illinois State law and cannot be guilty without a trial. See U.S. v. Crockett, 812 F.2d 626 (10th Cir. 1987). To sustain a conviction on the ground that evidence supported a charge that was not made in the indictment would be a sheer denial of due process. See Thornhill v. State of Alabama, 310 U.S. 88 (1940); De Jonge v. Oregon, 299, U.S. 353 (1937); Stromberg v. California, 283 U.S. 359 (1931). It is ancient doctrine of both common laws and of our Constitution that a defendant cannot be held to answer a charge not contained in the indictment brought against him. See Schmuck v. U.S., 489 U.S. 705 (1989).

Furthermore, my indictment does not charge me with violating ANY State law, which is an essential element for the alleged crime. See U.S. v. Myles, 923 F.3d 798 (10th Cir. 2019). When the indictment fails to include an essential element of the offense charged, it fails to charge any federal offense and a conviction under the indictment cannot stand. See U.S. v. Pupo, 841 F.2d 1235 (4th Cir. 1988); U.S. v. Santa-Manzano, 842 F.2d 1 (1st Cir. 1988).

Jurisdiction

The judgement of the U.S. Court of Appeals for the Tenth Circuit was entered on November 13, 2020. Petition for Rehearing was denied on January 14, 2021. Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Conclusion

The Courts have greatly deviated from the normal judicial procedure as well as the procedure required by the United States Constitution and, therefore, warrants Supreme Court intervention. Also the ruling directly contradicts Supreme Court precedent as well as precedent set by other district Courts, further requiring Supreme Court intervention. For these reasons this petition for a writ of Certiorari should be granted.

Opinions Below

The opinion of the United States Court of Appeals appears in Appendix A to the petition and is unpublished.

The opinion of the United States District Court appears in appendix B to the petition and is unpublished.

Conclusion

The petition for the writ of certiorari should be granted.

Respectfully submitted,

Logan M. Viquesney

April 13, 2021